



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XB152

Endangered Species; File No. 16645

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Georgia Department of Natural Resources (GA DNR) has applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The permit application is for the incidental take of ESA-listed shortnose (*Acipenser brevirostrum*) and Atlantic sturgeon (*A. oxyrinchus*) associated with the otherwise lawful commercial shad fishery in Georgia. The duration of the proposed permit is 10 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on the application materials. All comments received will become part of the public record and will be available for review.

DATES: Written comments must be received at the appropriate address or fax number (see ADDRESSES) on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: The application is available for download and review at http://www.nmfs.noaa.gov/pr/permits/esa_review.htm under the section heading ESA Section 10(a)(1)(B) Permits and Applications.

The application is also available upon written request or by appointment in the following office: Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13626, Silver Spring, MD 20910; phone (301)427-8403; fax (301)713-4060.

You may submit comments on this document, identified by NOAA-NMFS-2012-0090, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0090 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Submit written comments to Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13626, Silver Spring, MD 20910; Attn: Kristy Beard or Angela Somma.
- Fax (301)713-4060; Attn: Kristy Beard or Angela Somma.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept

anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Angela Somma at (301)427-8403.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The ESA defines "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

NMFS received a draft permit application from GA DNR on September 12, 2011. Based on a review of the application, NMFS requested further information. The applicant submitted a complete application on March 6, 2012 for take of ESA-listed shortnose and Atlantic sturgeon that may be caught incidental to the Georgia shad fishery. The State of Georgia has amended their commercial fishing regulations for the Georgia shad fishery to minimize the incidental capture of ESA-listed shortnose and Atlantic sturgeon. The new regulations restrict fishing to the lower portions of the Savannah, Ogeechee, and Altamaha Rivers and close the fishery in the Satilla and St. Mary's River. The Georgia shad fishery is open from January 1 to as late as April 30

each year, but would typically end March 31. Georgia regulations require that sturgeon captured in shad nets must be released unharmed into the waters from which they were taken. GA DNR would use a combination of a trip ticket system (self-reporting by fishermen) and direct observations to monitor the number of sturgeon incidentally captured each month in the commercial shad fishery.

GA DNR requests 3-year running averages for takes to account for the potential for a high-take year before or after low-take years. GA DNR estimates that incidental bycatch would not exceed 175 shortnose sturgeon per year (no more than 525 in a 3-year period) and 140 Atlantic sturgeon per year (no more than 420 in a 3-year period) in the Altamaha River, 75 shortnose sturgeon per year (no more than 225 in a 3-year period) and 50 Atlantic sturgeon per year (no more than 150 in a 3-year period) in the Savannah River, and 10 shortnose sturgeon per year (no more than 30 in a 3-year period) and 10 Atlantic sturgeon per year (no more than 30 in a 3-year period) in the Ogeechee River. A mortality rate of approximately 2.3 percent is anticipated based on recent research.

Conservation Plan

GA DNR's conservation plan describes measures designed to minimize, monitor, and mitigate the incidental take of ESA-listed sturgeon. The conservation plan includes Georgia's amended commercial fishing regulations for the Georgia shad fishery, which are expected to minimize the bycatch of sturgeon by closing to shad fishing sections of the rivers that previously had the highest bycatch rates. These closures would also protect known and suspected sturgeon spawning sites. Georgia regulations require that sturgeon captured in shad nets be released unharmed into the waters from which they were taken. GA DNR would use a combination of a trip ticket system (self-reporting by

fishermen) and direct observations to monitor the incidental take of sturgeon in the commercial shad fishery. Other monitoring or mitigation actions will be undertaken as required. Monitoring would be funded by GA DNR's Annual Operating Budget.

GA DNR considered and rejected two other alternatives: (1) no change to commercial shad regulations, and (2) establishing new upper boundaries for commercial shad fishing on the Altamaha and Savannah rivers, while completely closing the Ogeechee, Satilla, and St. Mary's rivers to commercial shad fishing.

National Environmental Policy Act

Issuing a permit would constitute a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) as implemented by 40 CFR parts 1500-1508 and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act (1999). NMFS intends to prepare an Environmental Assessment to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit.

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments received during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental takes of ESA-listed sturgeon. The final NEPA and permit determinations will

not be made until after the end of the comment period. NMFS will publish a record of its final action in the Federal Register.

Dated: April 5, 2012.

Lisa Manning, Acting Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

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